

01/02/2003

Bush Administration Outlines Strategy on WTO Dispute Settlement  
(Report to Congress criticizes some panel, Appellate Body rulings) (540)

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Washington – The Bush administration has reported to Congress its strategy for correcting what it regards as abuses in the World Trade Organization (WTO) dispute-settlement system.

In a December 30 report to Congress, required by the 2002 legislation that gave the president trade negotiating authority, the U.S. Department of Commerce laid out WTO cases that went against the United States and that the administration views as flawed.

The department said the administration plans to address its concerns in ongoing WTO negotiations on rules, including antidumping rules, and on the WTO Dispute Settlement Understanding.

The report emphasizes that the Bush administration agrees with most decisions of the WTO's dispute-settlement panels and Appellate Body. But it said some panels and the Appellate Body have imposed some requirements for implementation of trade remedy and safeguard laws that go way beyond the language of WTO agreements.

"If the perception develops that WTO panels and the Appellate Body are substituting their own policy judgment for a negotiated balance of rights and obligations," the report says, "then it will be difficult to maintain the support and confidence of members and the public in the value of future negotiations."

The Commerce report describes U.S. problems with a number of specific cases, all of them previously denounced by members of Congress.

One of those cases concerns the successful challenge by Australia and New Zealand to quotas on imports of lamb imposed under Section 201 of U.S. trade law, which gives an industry temporary "safeguard" protection from a surge of fairly traded imports. The department argues that the Appellate Body was wrong to have required the U.S. International Trade Commission (USITC) to report on the existence of "unforeseen developments" from imposing protection because WTO agreements make no such demands.

The report criticizes another Appellate Body ruling against USITC safeguard decisions in the lamb case as well as in cases on wheat gluten from the European Union (EU) and line pipe from South Korea. In requiring the USITC to analyze the extent of injury to a U.S. industry from sources besides imports, the Appellate Body argues that use of safeguard measures should be "extraordinary" – without basis in WTO agreements, the Commerce report says.

Similarly, the report criticizes WTO rulings against U.S. antidumping and anti-subsidies trade remedy laws.

The Commerce report lays out for Congress the actions the Bush administration is taking to try to change the WTO dispute-settlement system. It describes the U.S.-Chile negotiating proposal submitted in January that aims to give members greater control over the dispute-settlement process and greater flexibility to settle disputes. One part of the proposal, for example, would allow parties to dispute the right to comment on a draft of a final Appellate Body report.

The report also describes the U.S. position in WTO negotiations on rules for imposing antidumping and countervailing duties, emphasizing that the negotiations should "be designed to maintain the strength and effectiveness of the trade remedy laws." Another U.S. principle for those negotiations is that dispute-settlement panels should not impose obligations that are absent in the WTO agreements.

(The Washington File is a product of the Office of International Information Programs, U.S. Department of State.  
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